

**Notice of Allowability**

Application No.

10/824,299

Examiner

Louanne C. Krawczewicz Myers

Applicant(s)

BOYD ET AL.

Art Unit

1661

– The MAILING DATE of this communication appears on the cover sheet with the correspondence address–

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to amendment filed 9/29/05.
2. ☒ The allowed claim(s) is/are the claim.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some\* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
- (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
- 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
- (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |  |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                    |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance              |
|   | 9. <input type="checkbox"/> Other _____.   |

*LK Myers*

**Examiner's Amendment**

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **Must** be submitted no later than the payment of the Issue Fee.

**Examiner's Amendment Authorized**

Authorization for this Examiner's Amendment was given in a telephone interview with Jason L. Hornkohl on November 17 and 21, 2005.

**Amendment to the Disclosure**

The application has been amended as follows:

- A. Page 1, line 2, " 'SWEET THING' MAGNOLIA " has been deleted and --SWEET BAY MAGNOLIA NAMED 'SWEET THING'-- has been inserted in its place.
- B. Page 1, lines 3, 4 and 5, have been deleted ("INVENTORS ..... TN 37130").
- C. Page 1, after line 7 and before line 8(FIELD OF THE INVENTION), the following has been inserted:  
--VARIETAL DENOMINATION  
'SWEET THING' --.

- D. Page 1, line 17, --, (unpatented), -- has been inserted after "trees".
- E. Page 4, lines 1 and 2, "appears to have a greater cold tolerance than the species *Magnolia virginiana* var. *australis*" has been deleted and --is more tolerant of extreme cold than the species *Magnolia virginiana* var. *australis*, retaining its foliage year round in Middle Tennessee climate despite temperatures of  $-10^{\circ}\text{F}$ -- has been inserted in its place.
- F. Page 5, line 12, "variant" has been deleted.
- G. Page 7, line 5, " "Sweet Thing" " has been deleted and --'Sweet Thing'-- has been inserted in its place.
- H. Page 7, line 7, "Unnamed plant of" has been deleted and --Seed from mature, unnamed trees of-- has been inserted in its place.
- I. Page 7, line 7, --, (unpatented) -- has been inserted after "*australis*".
- J. Page 7, line 19, after "multi-stemmed.", the following has been inserted --'Sweet Thing' can be trained to a single stem.--.

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K. Page 7, line 21, "Matures" has been deleted and ~~–Mature–~~ has been inserted in its place.

L. Page 7, line 22, "Stem" has been deleted and ~~–Lateral Branches–~~ has been inserted in its place.

M. Page 8, line 2, ~~–The length of the new growth stem is 14 cm on average. –~~ has been inserted after "sub-opposite."

N. Page 8, lines 6 and 7, have been deleted ("Branching .....single stem.").

O. Page 10, line 8, "angle" has been deleted and ~~–diameter–~~ has been inserted in its place.

P. Page 10, between lines 8 and 9, ~~–Fruit: subglobose to ellipsoid, conelike aggregate of follicles with seeds dispersed throughout the follicles of the cone.–~~ has been inserted in its place.

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- Q. Page 10, lines 16 through 19, "Aggregate of follicles: Cone like shape ..... contains one seed." have been deleted.

**Amendment to the Abstract**

The abstract has been amended as follows:

A. Page 12, line 5, --trees of-- has been inserted after "than".

B. Page 12, line 5, --known to the inventors-- has been inserted after "*australis*".

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**Future Correspondence**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louanne C. Krawczewicz Myers whose telephone number is (571) 272-0979. The examiner can normally be reached on Monday and Thursday from 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg can be reached on (571) 272-0975. The fax phone numbers for the group is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent electronic business center whose telephone number is (866)-217-9197 (toll free) or (703) 305-3028 or (703) 308-6845 or email requests to [ebc@uspto.gov](mailto:ebc@uspto.gov).

LKM

*LKM*

KENT BELL  
PRIMARY EXAMINER

*Kent J. Bell*